Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

REPLY COMMENTS OF PEERLESS NETWORK, INC.; WEST TELECOM SERVICES, LLC; PENINSULA FIBER NETWORK, LLC; ALPHA CONNECT, LLC; RURAL TELEPHONE SERVICE COMPANY, INC. D/B/A NEX-TECH; NEX-TECH, LLC; AND TENNESSEE INDEPENDENT TELECOMMUNICATIONS GROUP, LLC D/B/A IRIS NETWORKS

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Peerless Network, Inc. ("Peerless"); West Telecom Services, LLC ("West Telecom"); Peninsula Fiber Network, LLC ("Peninsula Fiber Network"); Alpha Connect, LLC ("Alpha Connect"); Rural Telephone Service Company, Inc. d/b/a Nex-Tech and Nex-Tech, LLC (together, "Nex-Tech"); and Tennessee Independent Telecommunications Group, LLC d/b/a iRis Networks ("iRis Networks") (collectively, the "Carrier Coalition") respectfully file these reply comments pursuant to the September 8, 2017 Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings.[1]

I. INTRODUCTION AND SUMMARY

Tandem switching, transport, and transit services provided by intermediate carriers, such as the members of the Carrier Coalition, are vitally important to the telecommunications market. These services, among other things, provide significant competitive alternatives to services offered by the major incumbent local exchange carriers ("ILECs"), enhance network redundancy

[1] *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (rel. Sept. 8, 2017) ("*Notice*").

and reliability, facilitate and promote the transition to Internet Protocol ("IP") networks, improve routing integrity, and promote efficient interconnection. Further, many competitive intermediate carriers, including Peninsula Fiber Network/Alpha Connect, Nex-Tech, and iRis Networks, operate sophisticated fiber networks throughout rural areas, which are used to provide tandem and transport services to rural end offices, along with other key services to rural communities.

To preserve the important public interest benefits that these tandem switching, transport, and transit services promote, the Commission must ensure they remain viable and competitive following any additional intercarrier compensation ("ICC") reforms. The Commission should do so in a number of ways:

First, the Commission should follow the recommendations of NTCA and WTA to protect rural consumers from potentially harmful impacts of certain further intercarrier compensation reforms. Specifically, the Commission should: (1) not impose further ICC rate reductions until it addresses both the current high-support budget shortfalls *and* provides for sufficient, supplemental Connect America Fund ("CAF")-ICC support and (2) collect data and carefully evaluate the impact of its prior ICC reforms before proposing or implement new ones.

Second, the Commission should—consistent with the majority of recommendations made by commenters—define the network edge to ensure bill-and-keep does not apply to carriers that do not serve end users, while also establishing clear obligations concerning direct interconnection at the network edge. As noted by CenturyLink, AT&T, and ITTA, any network edge definition should ensure that intermediate carriers are not subjected to bill-and-keep, because they do not have end users from which to recover the costs of providing services. Further, as an alternative to the proposal made in its initial comments, the Carrier Coalition does not oppose CenturyLink's proposal that the end office be designated as the network edge. In

addition to avoiding asymmetric treatment of different providers, CenturyLink's proposal also addresses any unintended effects that the application of the "affiliate rule" could have on certain providers of tandem switching and transport to rural areas, as fully discussed in the Carrier Coalition's initial comments.

At the same, the Commission should—as recommended by several parties, including CenturyLink, ITTA, Verizon, GCI, and AT&T—prevent arbitrage schemes by requiring direct interconnection at the network edge with requesting carriers that have sufficient traffic volumes. Such a rule will prevent schemes—such as those perpetrated by wireless carriers—under which terminating carriers require traffic to be sent through a designated intermediate carrier partner that may impose charges that the terminating carrier could not impose itself. Further, the Commission should reject Sprint and T-Mobile's proposed unlawful and/or burdensome interconnection requirements, including proposed rules governing IP interconnection to non-telecommunications carriers or requiring carriers to migrate from one point of interconnection ("POI") per local access and transport area ("LATA") to one POI per state.

Third, the Commission should decline to apply bill-and-keep to tandem switching and transport services and instead should permit providers of such services to continue to charge their carrier customers pursuant to the existing permissive tariffing[2] regime. As noted by the majority of commenters, bill-and-keep is an irrational system for these services, because providers of these services generally do not have end users from which to recover the costs of providing service. Additionally, permissive tariffing rules should be preserved, because such rules promote competition by facilitating market entry and reducing transaction costs for smaller providers. At

[2] The references herein to "permissive detariffing" and "permissive tariffing" are used interchangeably to describe a regime in which carriers are permitted but not required to file tariffs for services.

the same time, the Commission's existing rules effectively protect abuses surrounding access stimulation.

Further, the Commission should make special considerations for carriers that provide tandem switching and transport services to and from rural exchanges. In particular, the Commission should ensure that bill-and-keep is not imposed on such carriers by virtue of an affiliate rule where such a carrier may be owned, in part, by a rural local exchange carrier ("RLEC") but is run independently and does not obtained any revenues from RLEC end users. Additionally, where an RLEC provides both tandem switching and end office switching, the Commission should provide an extended transition period for any transition of originating switched access rate elements, so that these RLECs carriers have sufficient time and ability to adapt to alternative cost recovery methods.

The Commission should also reject AT&T and Verizon's proposed 8YY traffic and transport mileage rules. Indeed, AT&T's request to apply bill-and-keep to 8YY traffic was recently addressed in comments filed in response to a similar proposal of the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), where commenters overwhelmingly opposed bill-and-keep as inappropriate and unworkable for 8YY service—a service premised on the notion that the receiving party will pay for the costs of the call, not the consumer. The proposed drastic change in treatment of 8YY traffic (which comprises a significant portion of originating traffic) would be hugely detrimental, in particular for carriers that rely heavily on originating access revenues. Similarly, Verizon's request for a cap on transport mileage is unfounded, because interexchange carriers ("IXCs") like Verizon can always, at a minimum, seek direct interconnection at the end office to avoid allegedly inefficient transport routes.

Finally, the Commission should—in accordance with the recommendations of many parties, including AT&T, CenturyLink, and South Dakota Network, LLC ("SDN")—refrain from imposing bill-and-keep or otherwise regulating transit services. As many commenters noted, the transit market is highly competitive, which is evidenced by declining rate trends. Further, adoption of widely supported direct interconnection requirements would lead to additional competitive pressure on transit rates. The Commission should instead preserve the current permissive tariffing system which has allowed robust competition and innovation to flourish in this market.

II. BILL-AND-KEEP TRANSITION: The Carrier Coalition Supports NTCA and WTA's Request that the Commission (a) Not Impose Further ICC Rate Reductions Until It Both Addresses the Current High-Support Budget Shortfalls and Provides for Sufficient, Supplemental CAF-ICC Support and (b) Carefully Evaluate the Impact of Such Prior ICC Reforms Before Proposing or Implementing Further ICC Reforms.

The Carrier Coalition agrees with NTCA/WTA's observations that the *Notice* was issued when rural carriers are already finding it extremely challenging to fund new investments in enhanced and expanded services. These challenges are presented due to (a) declining demand for traditional telephone services, (b) the Commission's prior ICC reforms, and (c) the high-cost support budget shortfall.[3] The numerous filings of NTCA and its members with the Commission demonstrate that RLEC budgets are currently strained under the Commission's existing high-cost support budget cap and prior ICC reforms that imposed rate reductions to bill-and-keep. Moreover, the "shortfalls caused by various USF budget mechanisms are endangering the Commission's broadband goals and rural America's chances of bridging the digital divide."[4]

[3] Joint Comments of NTCA-The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 10-90, CC Docket No. 01-92, at 4 (filed Oct. 26, 2017) ("NTCA/WTC Comments").

[4] *Id.* at 4.

Given these marketplace and regulatory realities, NTCA/WTC aptly note that the Commission should not, at this juncture, eliminate critical ICC revenues without the possibility of sufficient CAF-ICC replacement support. Doing so would jeopardize RLECs' ability to make new investments in broadband-capable networks without raising service rates for rural consumers to "even more unaffordable levels than already exist today."[5] Such a result runs contrary to Congress's mandate that consumers in rural and high cost areas have access to advanced telecommunications and information services at "affordable" and "reasonably comparable" rates.[6] That said, a critical "condition precedent" to adopting further ICC reforms that impose rate reductions (such as transitioning remaining rate elements to bill-and-keep)[7] is for the Commission to first address existing shortfalls in high-cost funding mechanisms, and determine how to do so without drawing from existing CAF-ICC or other high-cost USF support dollars.[8]

The Carrier Coalition also agrees with NTCA/WTA's request that before taking such further ICC reforms, the Commission study the impact of such previous ICC reforms on consumers and carriers. In so doing, the Commission should determine if these previous reforms have, in fact, resulted in lower wholesale and retail prices, improved service, and/or new and

[5] *Id.* at 5 & 10-11.

[6] *Id.* at 5.

[7] Because requiring direct connects is not a rate reduction, the Commission should immediately adopt the Carrier Coalition's Direct Connect Requirement. *See* Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC; Rural Telephone Service Company, Inc. d/b/a Nex-Tech; and Nex-Tech, LLC; Tennessee Independent Telecommunications Group, LLC d/b/a iRis Networks, WC Docket No. 10-90, CC Docket No. 01-92, at 11 (filed Oct. 26, 2017) ("Carrier Coalition Comments").

[8] NTCA/WTC Comments at 5. Chairman Pai recently acknowledged in letter sent to 37 members of Congress that the current regime "has made it harder, not easier, for small providers to serve rural, America." *See, e.g.*, Letter from Chairman Ajit V. Pai, FCC, to The Honorable Mike Bost, U.S. House of Representatives (dated Oct. 24, 2017), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1103/DOC-347601A1.pdf.

more innovative services for IXC and commercial mobile radio service ("CMRS") customers, and whether any such price reductions outweigh the increase in rates to local exchange end users and other costs associated with the reforms.[9] Otherwise, as NTCA/WTA note, further ICC reforms that impose rate reductions may give IXC and CMRS providers windfall profits that are entirely inappropriate, because such profits would be obtained at the expense of all other carriers.[10] Therefore, as NTCA/WTA recommend and "to avoid making policy 'in the dark,'"[11] the Commission should collect the necessary data to determine if the Commission's reforms have had the intended result.[12]

Similar to NTCA/WTA's recommendations,[13] the Carrier Coalition recommends that if, after collecting and analyzing that data, the Commission decides to proceed with implementing reductions for remaining rate elements, it must do so in a manner that: (1) promotes certainty regarding transport obligations to the network edge;[14] (2) facilitates IP-to-IP interconnection by providing stable and clear "rules of the road" governing all underlying network technologies

[9] NTCA/WTC Comments at 5.

[10] *Id.* at 5.

[11] *Id.* at 5-6 & 13.

[12] *Id.* at 6 & 13-16.

[13] *Id.* at 6.

[14] In connection with the defining the network edge, the Carrier Coalition recommends that the Commission establish guidelines for state commissions to follow to ensure consistent overall implementation of the network edge across the nation (rather what could end up being a patchwork of different network edges across the nation). *See also* Carrier Coalition Comments at 9. As ITTA explained, the Commission has the authority to do just that. Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90, CC Docket No. 01-92, at 6 (filed Oct. 26, 2017) ("ITTA Comments").

without artificial distinctions;[15] and (3) avoids creating and adopting pricing rules that result in an unconstitutional regulatory takings for any carrier.[16]

III. NETWORK EDGE: The Carrier Coalition (a) Supports the Requests that the Commission Ensure Bill-and-Keep Applies Only to Services Provided by Carriers Serving End Users, (b) Supports the Requests for Rules that Require Direct Interconnection at the Network Edge and (c) Opposes Adoption of Rules Governing IP Interconnection to Non-Telecommunications Carriers

A. Commenters Strongly Support a Network Edge Definition that Ensures Bill-and-Keep Only Applies to Switched Access Services Provided by Carriers Serving End Users

The Carrier Coalition's initial comments urged that any network edge definition should place the dividing line between:

(1) the carrier networks used to provide services directly to end user subscribers, and

(2) the carrier networks that do not directly serve end users.[17]

Nearly all parties that commented on this issue agree that the Commission should follow this general guideline when defining the network edge.[18]

For example, CenturyLink advocates that the Commission "should specify, as its central network edge principle, that the switch that serves the end user (the called party on the

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[15] As NTCA/WTC recommend and as discussed below, the Commission should confirm that entities seeking the benefits of 251/252 interconnection must themselves offer telecommunications services on a common carriage basis in the area where they seek such interconnection. NTCA/WTA at 23.

[16] Carrier Coalition Comments at n.50.

[17] *Id.* at 6-11.

[18] NTCA/WTA maintain that the "determination of the edge must thus be left to the states as a matter of law" and that the Commission should only "provide guidance for states to follow in making such determinations by adopting a default rule to apply where states decline to act." NTCA/WTA Comments at 20. But as AT&T explains, "to promote predictability and reduce transaction costs," the Commission "should establish the default network edge via a federal rule that applies uniformly across the country" because "a patchwork of state determined edges would make negotiations for efficient arrangements more difficult." AT&T Comments at 5; *see also* note 14 *supra*.

terminating side) is the default financial edge – *i.e.* the point at which an IXC carrier ceases responsibility for carrying traffic."[19] AT&T recognizes that "[t]he end-state bill-and-keep system with a network edge will not end all intercarrier payments…because sometimes the sending carrier will need to engage (and pay) a third carrier to deliver calls to the designated edge."[20] ITTA likewise states that "it makes the most sense that the [network] edge be delineated at the point where the terminating carrier's facilities are the only ones in the call path."[21]

Further, while the Carrier Coalition proposed certain network locations to serve as the presumptive network edge, the Carrier Coalition does not oppose the proposal of CenturyLink and ITTA to explicitly establish the *end office* as the default network edge.[22] CenturyLink rightly points out that there exists a fundamental asymmetry under the Commission's existing rules. On one hand, such rules require certain carriers to transition terminating tandem switching and transport rates to bill-and-keep where they own both the tandem and end office switches.[23] On the other hand, tandem switching and transport services provided by carriers that do not own the end office remain fully compensable.[24] In each case, however, the services provide the same functionality. Thus, establishing the end office as the default network edge in all circumstances would remove this asymmetric treatment from the Commission's existing regime.

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[19] Comments of CenturyLink, WC Docket No. 10-90, CC Docket No. 01-92, at 4 (filed Oct. 26, 2017) ("CenturyLink Comments").

[20] Comments of AT&T Services Inc. to Refresh the Record, WC Docket No. 10-90, CC Docket No. 01-92, at 2 (filed Oct. 26, 2017) ("AT&T Comments").

[21] ITTA Comments at 4 (stating that the network edge should be located at "the called party's end office if it is an incumbent local exchange carrier (LEC), mobile switching center if it is a wireless provider, or competitive LEC point of presence").

[22] CenturyLink Comments at 3 & 9; ITTA Comments at 4.

[23] CenturyLink Comments at 6-7.

[24] *Id*.

Establishing the end office as the default network edge would also have the benefit of addressing issues raised by the Carrier Coalition concerning application of any "affiliate rule" to carriers providing competitive tandem switching and transport services.[25] This default rule ensures that intermediate carriers providing tandem switching and transport services to and from rural areas will not be inappropriately subjected to bill-and-keep by virtue of an affiliate rule. As noted, application of an affiliate rule to these carriers would jeopardize the vital services that they provide to rural areas.[26] Further, a number of commenters acknowledge other asymmetries resulting from the affiliate rule that currently applies to certain price cap carriers when providing tandem switching and transport.[27] These asymmetries and any associated arbitrage opportunities would likewise be addressed by simply establishing the end office as the default network edge.

Lastly, the Commission should reject AT&T's proposal to move the network edge to the tandem switch whenever a tandem provider carries "at least three or more times more terminating access traffic than originating access traffic (or vice-versa)."[28] Such rule is entirely inappropriate, because it amounts to a *per se* access stimulation rule based solely on traffic ratios. Imposing a *per se* rule based on traffic ratios alone would be entirely unfair, because it would punish carriers based solely on traffic characteristics that they do not control. Indeed, in the *2011 USF/ICC Transformation Order*,[29] the Commission expressly sought to avoid finding

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[25] Carrier Coalition Comments at 5 & 26-28.

[26] *Id.* at 26-28.

[27] Comments of NCTA – The Internet & Television Association, WC Docket No. 10-90, CC Docket No. 01-92, at 4-5 (filed Oct. 26, 2017) ("NCTA Comments"); Comments of Sprint Corporation, WC Docket No. 10-90, CC Docket No. 01-92, at 4-5 (filed Oct. 26, 2017) ("Sprint Comments"); Comments of Verizon, WC Docket No. 10-90, CC Docket No. 01-92, at 13 (filed Oct. 26, 2017) ("Verizon Comments").

[28] AT&T Comments at 23-24.

[29] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support;*

access stimulation based solely on traffic ratios, instead opting for "narrowly tailored" rules targeted at carriers that intentionally engage in regulatory arbitrage.[30]

Specifically, under the existing rules, a carrier is only deemed to engage in access stimulation if it has a revenue sharing agreement, *in addition to* meeting the 3:1 originating/terminating traffic ratio or other volume-based thresholds.[31] AT&T already has the ability to challenge *actual* arbitrage schemes based on the presence of a 3:1 originating/terminating traffic ratio, such that creation of a *per se* rule based on traffic ratios alone is both inappropriate and unnecessary. Such a rule is also inappropriate given that the market for tandem services is competitive, and thus AT&T can utilize competitive alternatives where it wishes to avoid dealings with a particular carrier.

B. There Is Wide Support for Imposition of Direct Interconnection Obligations at the Network Edge

In an effort to promote efficient interconnection and stop arbitrage, the Carrier Coalition has urged the Commission to immediately adopt direct interconnection obligations where justified by traffic volumes—including with wireless carriers.[32] Many commenters, including

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Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*2011 USF/ICC Transformation Order*") (subsequent history omitted).

[30] *2011 USF/ICC Transformation Order*, ¶ 33. Further, the Commission specifically declined to impose mandatory detariffing on carriers engaged in access stimulation. *Id.* ¶ 692.

[31] 47 C.F.R. § 61.3(bbb). In particular, the Commission's rules require competitive carriers and rate-of-return ILECs to refile their interstate switched access tariffs at lower rates if such a LEC (1) has a revenue sharing agreement and (2) has either a three-to-one ratio of terminating-to-originating traffic in any month or experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year. *2011 USF/ICC Transformation Order*, ¶ 33.

[32] Carrier Coalition Comments at 11-23.

CenturyLink, ITTA, Verizon, GCI, and AT&T, recognize the problems caused by carriers that refuse direct interconnection.

AT&T agrees that such direct connection refusals raise a significant concern,[33] although ironically its wireless affiliate—which is one of the nation's largest wireless carriers with likely far more traffic than the amount of traffic AT&T disputes that other carriers handle (which are described *five (5)* times in AT&T's comments as "unscrupulous" carriers)[34]— is known to refuse direct interconnection requests or not allow interMTA traffic be sent over direct connects.[35] AT&T states that "[i]n some cases, terminating carriers and intermediate transport providers seek to force sending carriers to route traffic via a particular tandem switch owned by the intermediate provider, and then agree to share the resulting revenues from tariffed tandem and transport charges."[36] As such, AT&T states that "a necessary corollary to any network edge rule is a rule that explicitly guarantees that the party that has the financial responsibility to carry traffic to or from a network edge has the unfettered freedom to choose how, and by what arrangements, that party will carry the traffic on its side of the edge."[37] The Carrier Coalition agrees with this assessment, but notes that all wireline and wireless carriers should be held to the same standard.[38]

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[33] AT&T Comments at 7-11, 13-14.

[34] AT&T Comments at 3, 12, 13, 22, & 29.

[35] *See* Carrier Coalition Comments at 14 & n.28 (noting, among other things, that "all four major Wireless Carriers have refused direct connects for interMTA traffic that terminates on their networks and/or are, directly or indirectly, assessing excessive MOU fees to terminate such traffic" and citing O1's complaint against AT&T Wireless).

[36] *Id*. at 8.

[37] *Id*. at 3.

[38] Even Inteliquent, which serves as T-Mobile's intermediate carrier partner, has advocated for the Commission to provide for end office direct connection to prevent arbitrage opportunities. *See* Letter from Gerard J. Waldron, Counsel for Inteliquent, Inc., to Marlene Dortch, Secretary,

Other parties support similar Commission action to ensure direct interconnection is made available where justified:

- CenturyLink advocates for the Commission to "clarify that all carriers … have the right to determine the most economical manner in which to deliver the traffic to the edge, including the right to directly connect with terminating providers for access traffic to avoid usage-based tandem switching and transport charges."[39]

- ITTA notes that some if its members "have been prevented from terminating traffic directly to wireless networks" and that such "obstructionism by some wireless carriers artificially inflates transport costs in contravention of Sections 251(a) and 201" of the Communications Act of 1934, as amended (the "Act"),[40] and recommends that the Commission "rectify the situation by clarifying that, pursuant to Sections 251(a) and 201, every carrier has the right to terminate traffic directly to other carriers, as long as the carrier bears responsibility to transport the traffic to the terminating carrier's network edge."[41]

- Verizon also raises concerns with carriers refusing to provide direct interconnection, stating that "some companies refuse to negotiate more efficient interconnection arrangements, such as direct connections or IP-based interconnections, because they do not want to lose tandem switching or transport revenues."[42]

- GCI similarly proposes that "all LECs within Alaska be required to establish direct interconnection with any carrier, within their local exchanges, upon reasonable request," given that "some LECs refuse to interconnect directly with IXCs."[43]

FCC, WC Docket Nos. 16-363, 10-90, 07-135, CC Docket No. 01-92, at presentation page 11 (filed Oct. 12, 2017) (stating that "Inteliquent prefers the FCC implement a direct connect requirement…"). As the Carrier Coalition previously noted, Inteliquent's rate deck pricing went up by 400 percent after it (on information and belief) entered into a revenue sharing agreement with T-Mobile. Carrier Coalition Comments at 18 & n.36.

[39] CenturyLink Comments at 4; *see also id*. at 8-9.

[40] ITTA Comments at 7-8.

[41] *Id*. at 9.

[42] Verizon Comments at 4.

[43] Comments of General Communications, Inc. in Response to the Public Notice to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit, WC Docket No. 10-90, CC Docket No. 01-92, at 4-5 (filed Oct. 26, 2017); *see also id*. at 6 ("Any IXC that is willing to bring traffic all the way to the local exchange

As discussed at length in the Carrier Coalition's initial comments, direct interconnection obligations will serve to stop arbitrage schemes under which certain terminating carriers—including major national wireless carriers—require traffic to be sent through a designated intermediate carrier partner, which then imposes charges that the terminating carrier could not impose itself.[44] The Carrier Coalition proposed that terminating wireline and wireless carriers be obligated to make direct interconnection available to requesting carriers that send or receive at least four (4) T-1s of originating and/or terminating traffic per month (or 200,000 minutes of use ("MOUs") per month), for all traffic (whether local, long distance, wholesale, or retail), with a zero rate MOU for all terminating traffic.[45] This proposal is reasonable as a matter of economics, reflects industry standards for bi-directional/two-way traffic, and is consistent with prior Commission pronouncements.[46] Given the wide support for direct interconnection obligations, the Commission should adopt this proposal.

C. The Commission Should Reject Calls for Adoption of Rules Governing IP Interconnection to Non-Telecommunications Carriers and Other Burdensome Interconnection Requirements

A few commenters seemingly ask the Commission to impose requirements governing IP interconnection under Section 251 of the Act.[47] However, as NTCA/WTA stated, while

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of the terminating LEC should be able to do so, rather than being forced to use the services of a transit provider. For wireless and VoIP providers, to the extent that they interconnect only through a tandem, they should either permit direct interconnection or bear the costs of the tandem transit in order similarly to avoid tandems becoming bottleneck pricing points with no market-based alternatives.").

[44] Carrier Coalition Comments at 13-20.

[45] *Id*. at 11-13.

[46] *Id*.

[47] *See, e.g.*, Sprint Comments at 3-4; *see generally* Comments of T-Mobile USA, Inc., WC Docket No. 10-90, CC Docket No. 01-92 (field Oct. 26, 2017) ("T-Mobile Comments"); *but see* AT&T Comments at 25 (explaining that the "Commission has no statutory authority to regulate IP-to-IP interconnection").

"[S]ections 251 and 252 of the Act do not distinguish between network technologies underlying interconnection arrangements,"[48] "the interconnection provisions of the Act are expressly limited to circumstances where the requesting entity is a telecommunications carrier."[49]

With respect to non-telecommunications carriers, the Commission lacks statutory authority to establish rules and obligate telecommunications carriers to interconnect with non-telecommunications carriers under Section 251, such as those providers that only offer voice over internet protocol ("VoIP") services. This is so because Section 251(a) obligations are limited to interconnection "with the facilities and equipment of other telecommunications carriers."[50] While the Commission allows VoIP providers to partner with a wholesale telecommunications carrier to interconnect and exchange traffic with the public switched telephone network ("PSTN"), VoIP services have not been classified as telecommunications services[51] and thus such VoIP providers do not have Sections 251(a)-(c) interconnection rights on their own.[52] Moreover, requiring telecommunications carriers to interconnect (pursuant to

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[48] NTCA/WTA Comments at 23.

[49] *Id*.

[50] 47 U.S.C. § 251(a)(1). Moreover, FCC Rule 51.100(b) further clarifies that "[a] telecommunication carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well." 47 C.F.R. § 51.100(b).

[51] *See, e.g.*, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, 31 FCC Rcd 13911, n.68 (2016) (stating that the FCC "has not classified interconnected VoIP service as telecommunications service or information service as those terms are defined in the Act, and we need not and do not make such a determination today") (subsequent history omitted); *2011 USF/ICC Transformation Order*, ¶ 718, 954, 1387, n.1902.

[52] *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶¶ 14, 16 (WCB 2007) (stating that "we emphasize that the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at

Sections 251(a)-(c), as may be applicable) with the IP networks of non-telecommunications carriers would be particularly inappropriate, because it would allow those providers that only offer VOIP services the right to interconnect with the PSTN without incurring the many regulatory obligations—particularly those at the state level—that are imposed on traditional telecommunications carriers.

This would create an inappropriate, uneven playing field that would inure to the benefit of non-telecommunications carriers, as they would be able reap the benefits of Sections 251(a)-(c) interconnection rights without having to assume the related burdens and costs the applicable statutory sections impose on telecommunications carriers. Thus, as NTCA/WTC recommends, "the Commission should confirm that entities seeking the benefits of 251/252 interconnection must themselves offer telecommunications services on a common carriage basis" in the area where they seek such interconnection.[53]

IP interconnection with a non-telecommunications carrier should therefore remain unregulated (*i.e.*, subject to commercial arrangements),[54] with the exception of the good faith

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a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis" and that the ruling "is limited to telecommunications carriers that provide wholesale telecommunications service and that seek interconnection *in their own right* for the purpose of transmitting traffic to or from another service provider") (emphasis in original); *see also In the Matter of Numbering Policies for Modern Communications; IP-Enabled Services; Telephone Number Requirements for IP-Enabled Services Providers; Telephone Number Portability, Developing a Unified Intercarrier Compensation Regime; Connect America Fund; Numbering Resource Optimization*, WC Docket Nos. 13-97, 04-36, 07-243, 10-90, CC Docket Nos. 95-116, 01-92, 99-200, Report and Order, 30 FCC Rcd 6839, ¶ 80 (2015) (stating that "[S]ections 251(a)-(c) pertain expressly to telecommunications carriers, local exchange carriers, and incumbent local exchange carriers, respectively," and thus, unlike other provisions, Congress intended to limit those sections to such telecommunications carriers); *see also* AT&T Comments at 25.

[53] NTCA/WTA Comments at 23.

[54] NCTA Comments at 5 (explaining that "[g]iven that there already are well established market-based arrangements by which providers exchange IP-based Internet traffic, and many providers have entered into *commercial arrangements* for the exchange of IP-based voice traffic, the

negotiation requirement.[55] The Commission may nevertheless provide further incentives to encourage IP interconnection agreements. For example, as NCTA requests, any network edge rules may allow telecommunications carriers to establish IP interconnection for voice traffic at locations that may be different from the default network edge for telecommunications traffic (such as where IP-based Internet traffic is exchanged) under commercial agreements.[56]

On the other hand, the Commission should reject Sprint's request that network operators be responsible for the costs of establishing connections at an IP POI that is not located at the default network edge established for telecommunications traffic.[57] Network owners should only be responsible for costs associated with facilities necessary to provide interconnection at the default network edge, as mandating interconnection at multiple locations would cause originating and terminating carriers to unfairly bear costs associated with IP interconnection, despite the asymmetric regulatory treatment of IP vis-à-vis traditional telecommunications.

The Commission should likewise reject T-Mobile's proposal to migrate from one POI per LATA to one POI per state.[58] While T-Mobile may take such an approach via commercial agreements, in no case should a telecommunications carrier be obligated to pay for transport to reach a POI beyond its network edge. Such a dramatic change would greatly undermine network investments that have been made based on existing network topography. Moreover, because T-

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exchange of voice traffic in IP should not require the type of comprehensive regulation that has governed TDM-based traffic exchange.") (emphasis supplied).

[55] *2011 USF/ICC Transformation Order*, ¶ 1011 (imposing an obligation for "all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic").

[56] NCTA Comments at 5-6.

[57] Sprint Comments at 4.

[58] T-Mobile Comments at ii & 8-10.

Mobile's proposal would migrate all interconnection points to just a few locations in the nation,[59] it should be rejected for network redundancy, reliability and security concerns. Indeed, if interconnection points were consolidated to only a few locations, an emergency or natural disaster affecting one interconnection point could have drastic effects and make networks difficult to restore. The existing LATA-based interconnection topography should therefore be preserved, until such time as there is industry consensus on a suitable alternative.

IV. TANDEM SWITCHING AND TRANSPORT: Tandem Switching and Transport Services to the Network Edge Should Not Be Subjected to Bill-and-Keep and Should Remain Subject to Permissive Tariffing, Specific Rules Should Be Adopted to Account for Certain Circumstances Involving Carriers that Serve Rural Areas, and Proposals on Charges for 8YY Traffic and Capping Transport Mileage Should be Rejected.

A. The Commission Should Not Extend the Bill-and-Keep Regime to Tandem Switching and Transport Services Outside the Network Edge.

The rate reductions to bill-and-keep that were adopted under the *2011 USF/ICC Transformation Order* did not apply to tandem switching and transport providers that do not own the end office (*i.e.*, intermediate carriers), because such providers do not have end users from which to recover payments under a bill-and-keep system. The Carrier Coalition urged the Commission to preserve this crucial carve-out by establishing three rules:

1. A sending carrier will compensate intermediate carriers for all services that the sending carrier chooses to purchase, including without limitation dedicated transport, common transport, tandem switching, and/or other network functions.

2. A terminating carrier will not be compensated for tandem switching and common transport where the terminating carrier fully owns the access

[59] *Id*. at i (explaining that "[t]he FCC is uniquely able to coordinate efforts of industry and the states to address the challenges associated with migrating from one POI per LATA to a *few POIs for the entire country*) at 8-9 (stating that "[t]he IP Transition will succeed in the United States only if carriers are able to efficiently exchange all traffic at a *few POIs across the nation*.") (emphasis supplied).

tandem serving the called party's end office (since the access tandem will be the terminating carrier's network edge).[60]

3. A sending carrier will compensate a terminating carrier if the sending carrier chooses to rely on a terminating carrier to provide common transport needed to reach the terminating carrier's network edge.

Commenters overwhelmingly support preserving the carve-out so that the bill-and-keep regime does not extend to tandem switching and transport services outside the network edge and recognize that it would be inappropriate to extend bill-and-keep to intermediate carriers. Parties universally agree that the terminating carrier should have financial responsibility to carry traffic from the network edge to the end user, while the sending carrier should have financial responsibility to deliver the traffic over its facilities, or those of an intermediate carrier, to the terminating carrier's network edge.

For instance, AT&T urges the Commission "to adopt a rule establishing a default 'network edge' – the point marking where the financial responsibilities of the sending and terminating carriers begin and end" and acknowledges that bill-and-keep does not apply when a sending carrier engages an intermediate carrier (third party carrier) to deliver calls to the designated network edge.[61] AT&T agrees "that the carrier that bears the financial responsibility to deliver traffic to (or from) the edge has the unfettered right to choose how and by what arrangements it will deliver that traffic to (or from) the designated edge."[62] AT&T further explains that "if the sending carrier does not interconnect physically at the network edge, it can

[60] An equivalent network edge rule should be adopted for originating traffic if the Commission decides to ultimately transition originating switched access rate elements to bill-and-keep. Of course, if the Commission determines that the network edge is simply the terminating carrier's end office (and not tandem where the terminating carrier fully owns the access tandem serving the called party's end office), *see* discussion *supra* at Section III.A. and *infra* at Section IV.C, then rule 2 would be inapplicable.

[61] AT&T Comments at 2.

[62] *Id*. at 7.

satisfy its financial obligation to deliver its traffic to the terminating carrier's edge in a variety of ways, including by purchasing intermediate services from a third party."[63]

Similarly, CenturyLink states that the Commission "should find that bill-and-keep should not be mandated for any tandem switching and transport services [when] those services are provided in connection with traffic…to a third party (*i.e.* wholly unaffiliated) end users."[64] Verizon likewise agrees that the sending carrier is financially responsible for delivering its traffic to the terminating carrier's edge and that the "sending carrier can deliver traffic directly or indirectly, via a third-party provider of transit services."[65] And ITTA succinctly states it is "self-evident" that a result where a carrier cannot obtain compensation for the services it provides would be "inappropriate."[66] The Commission should follow these recommendations by preserving the carve-out for intermediate carriers.

B. The Commission Should Continue to Allow Permissive Detariffing.

Tandem and transport services provided by intermediate carriers should remain subject to permissive tariffing, with tariff filings continued to be deemed lawful when filed pursuant to Section 204(a)(3) of the Act[67] or otherwise presumed lawful when made effective on one-day's notice.[68] Permissive tariffing remains important as a matter of good public policy,[69] as it

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[63] *Id.* at 5.

[64] CenturyLink Comments at 3.

[65] Verizon Comments at 12.

[66] ITTA Comments at 6. While T-Mobile indicates that all traffic exchanged at the safe harbor POI should be bill-and-keep and that no carriers should be permitted to impose usage charges for the origination or termination of any traffic exchanged at the safe harbor POI, it does not state that the sending carrier should not compensate its intermediate carrier for delivering the traffic to T-Mobile's proposed safe harbor POI and it does not otherwise provide an explanation on why compensation would not be due.

[67] *See* 47 U.S.C. § 204(a)(3); 47 C.F.R. § 61.15(b).

[68] Carrier Coalition Comments at 25.

promotes competition by protecting smaller intermediate carriers and reduces transaction costs associated with maintaining individual contracts with many carrier customers.[70] Moreover, as discussed below, permissive tariffing is in the public interest and remains necessary to ensure rates are just and reasonable, avoid unjust and unreasonable discrimination, and protect consumers.

1. Permissive tariffing remains necessary to ensure rates are just and reasonable.

The Commission should reject AT&T's proposal for a "detariffing transition" for tandem switching and transport services.[71] If these intermediate carrier services were subject to mandatory detariffing, especially while the ILECs' tandem switching and transport services were not subject to such detariffing (which is exactly what AT&T proposes), IXCs would have dramatically increased negotiation strength with no incentive whatsoever to negotiate a reasonable rate, if any rate at all, with intermediate carriers. Consequently, IXCs would attempt to use the absence of a tariff to avoid payment altogether, which would prevent intermediate carriers from recovering just and reasonable rates.

This unjust and unreasonable practice already has borne true in practice in related circumstances. Where IXCs have challenged the enforceability of specific switched access tariffs, they often aggressively dispute and, in many cases, engage in self-help by refusing to pay any amount for the switched access charges under dispute, forcing switched access providers to seek payment through collection actions. In the collection actions, complaints typically include both breach of tariff and state law claims for recovery under equitable theories such as unjust

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[69] As indicated in the *2011 USF/ICC Transformation Order*, the Commission permits both tariffing and negotiated arrangements. *2011 USF/ICC Transformation Order,* ¶ 812.

[70] Carrier Coalition Comments at 34.

[71] AT&T Comments at 19.

enrichment, quantum meruit, and implied contract. However, IXCs have recently been successful in dismissing these equitable claims[72] under the argument that any non-tariffed rate may only be collected under a negotiated agreement.[73] If IXCs are also successful in challenging the tariff, the IXCs receive a windfall—*i.e.*, they effectively obtain the services for free.

Similar gamesmanship of intercarrier compensation rules occurred under the former regime governing the exchange of intraMTA traffic between LECs and Commercial Mobile Radio Service ("CMRS") providers. Under those former rules, a CMRS provider was required to pay "reasonable compensation" to a LEC in connection with terminating traffic originating on the network of the CMRS provider, and vice versa.[74] While many LECs filed state tariffs that included wireless termination charges as a way to impose the "reasonable compensation" obligation on CMRS providers, the Commission issued its *T-Mobile Order* in 2005, which found

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[72] As an illustrative example of the litigation that results when an IXC refuses to pay for services provided and challenges state law equitable theories for recovery such as unjust enrichment, quantum meruit, and implied contract, a recent motion to dismiss filed in federal district court by AT&T is attached hereto. *See* AT&T Corporation's Motion to Dismiss in Part Plaintiff's Complaint; Memorandum of Points and Authorities in Support, Case No. 3:16-cv-01452-VC, Doc. 22, at 10-15 (N.D. Cal., filed Apr. 26, 2016) (attached hereto as "Exhibit A").

[73] *See Midcontinent Communications v. MCI Communications Services, Inc.*, 4:16–CV–04070–KES, 2016 WL 6833944, at *4 (D.S.D. Nov. 18, 2016) (dismissing unjust enrichment claims and holding that "CLECs cannot pursue alternate damage theories, such as unjust enrichment, for services provided outside a valid tariff or negotiated contract."); *Peerless Network v. MCI Commc'ns Servs*., No. 14-C-7417, 2015 WL 2455128, at *8-10 (N.D. Ill. May 21, 2015) (holding that the filed rate doctrine bars recovery for service provided under equitable claims in the absence of a tariff or negotiated agreement); *see also Qwest Commc'ns v. Aventure Commc'ns Tech*., No. 4:07-cv-00078-JEG, 2015 WL 711154, at *79-82 (S.D. Iowa Feb. 17, 2015); *XChange Telecom v. Sprint Spectrum*, No. 1:14–cv–54, 2014 WL 4637042, at *5 (N.D. N.Y. Sept. 16, 2014) (finding that the plaintiff could not charge for services provided outside the tariff and dismissing equitable claims to recover for services provided within the tariff); *Connect Insured Tel. v. Qwest Long Distance*, No. 3:10–CV–1897–D, 2012 WL 2995063, at *2 (N.D. Tex. July 23, 2012) (dismissing equitable claims because the filed rate doctrine prohibits parties from enforcing provisions of a tariff through an equitable claim).

[74] *See* 47 C.F.R. § 20.11(b) (2005).

that intraMTA traffic should not be billed pursuant to tariffs.[75] The *T-Mobile Order* indicated a preference for these issues to be resolved through commercial negotiations, while at the same time all intraMTA traffic remained subject to the "reasonable compensation" obligation in the absence of an agreement.[76]

Following issuance of the *T-Mobile Order*, however, many of the major CMRS carriers maintained that as long as there was no agreement in place, no compensation was owed.[77] Consequently, many LECs had difficulty negotiating agreements with CMRS providers, with efforts often leading to protracted negotiations and, in many cases, litigation before federal courts and the Commission.[78] Ultimately, the Commission determined that default "reasonable compensation" rates should be set by state commissions.[79] However, this decision led to highly

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[75] *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 9 (2005) ("*T-Mobile Order*") (subsequent history omitted).

[76] *Id.* (noting the Commission's "preference for contractual arrangements").

[77] *See, e.g.*, Memorandum of Law of Defendants in Support of Motion to Dismiss, at 1, *Manhattan Telecommunications Corporation v. Cellco Partnership*, Case 1:09-cv-02409-RJS (S.D. N.Y. filed June 19, 2009) (arguing that the *T-Mobile Order* required reasonable compensation arrangements to "be determined exclusively by privately negotiated agreements" and seeking to dismiss state law claims for recovery); Response of Cellco Partnership d/b/a Verizon Wireless to Informal Complaint, at 2, *Informal Complaint of Line Systems, Inc. v. Cellco Partnership, et al.*, File No. EB-11-MDIC-0003 (F.C.C. filed July 12, 2011) (indicating that no payment was made due to the purported inability of the parties to reach a negotiated traffic exchange agreement); *see also North County Communications Corp. v. California Catalog & Technology*, 594 F.3d 1149 (9th Cir. 2010) (holding that FCC regulation did not provide CLECs with a private right of action to seek recovery of reasonable compensation in federal court).

[78] *See* note 77 *supra*; *see also PaeTec Communications, Inc. v. Cellco Partnership*, Civil Action No. 07-821, 2007 WL 2300775, at *2 (D. N.J. Aug. 7, 2007) (referring issues concerning the identification of interMTA and intraMTA traffic to the Commission under the doctrine of primary jurisdiction).

[79] *North County Communications Corp., Complainant, v. MetroPCS California, LLC, Defendant.*, File No. EB-06-MD-007, Order on Review, 24 FCC Rcd 14036, ¶ 1 (2009) (finding that "North County must first obtain from the California Public Utilities Commission…a determination of a reasonable rate for North County's termination of intrastate, intraMTA traffic

contested, drawn-out state commission proceedings, during which LEC efforts to collect any charges from CMRS providers were stymied.[80]

A similar result should be expected between IXCs and intermediate carriers if the Commission mandated detariffing. If intermediate carriers were suddenly subject to mandatory detariffing, IXCs would (1) have dramatically increased negotiation strength with no incentive to enter into commercial agreements for services at any rates, let alone reasonable rates and (2) seek to avoid exposure under state law theories of recovery by asserting that such claims are preempted by the federal regulatory regime.[81] Moreover, because IXCs have been fairly successful in dismissing state law claims on preemption grounds under the current regulatory regime, as noted above,[82] IXCs would be far more emboldened to avoid entering negotiated arrangements if there was mandatory detariffing. Relatedly, when the Commission gave IXCs the right to permissively tariff "dial-around" services, it held that such permissive tariffing was in the "public interest" due to concerns of establishing "enforceable contract[s]."[83] The same

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originated by MetroPCS"), *aff'd sub. nom. MetroPSC California, LLC v. FCC*, 644 F.3d 410 (D.C. Cir. 2011).

[80] *See, e.g., Application of North County Communications Corporation of California (U5631C) for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers*, A.10-01-003, D.12-03-027, Order Denying Rehearing of Decision (D.) 10-06-006, 2012 WL 868973 (Cal. P.U.C. Mar. 8, 2012); *Complaint of Xchange Telecom, Inc. Against Sprint Nextel Corporation for Refusal to Pay Terminating Compensation*, Cases 07-C-1541 & 09-C-0370, Order Denying Requests for Rehearing and Granting Request for Rehearing in Part and Denying in All Other Respects, 2012 WL 1066421 (N.Y. P.S.C. Feb. 17, 2012).

[81] *See, e.g.,* Exhibit A at 9 of 23.

[82] *See* note 73 *supra.*

[83] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-91, Order on Reconsideration, 12 FCC Rcd 15014, ¶¶ 32-33 (1997) ("*1997 Order on Reconsideration of Mandatory Detariffing of Nondominant IXC Services*") (subsequent history omitted); *see also* 47 CFR § 61.19(b) (mandatorily detariffing all nondominant carrier interstate and international, long distance services, other than dial-around 1+ services, and certain other services and calls).

concern holds true here and therefore the current permissive tariffing rules indisputably remain necessary.[84]

Furthermore, mandatory detariffing is wholly unnecessary, because the Commission's existing rules already ensure that CLEC rates for tandem switching and transport are just and reasonable. As AT&T recognizes, the tariffed switched access rates tandem switching and transport are capped.[85] Further, when a CLEC engages in access stimulation, its tariffed rates are already automatically detariffed unless reduced to the lowest rate assessed by any price cap ILEC in the same state.[86] Thus, to the extent AT&T claims that CLECs engaged in access stimulation are setting tandem switching and tandem-switched transport rates above such levels, the

[84] If the Commission were to order mandatory detariffing (which it shouldn't), it needs to adopt conditions similar to those West proposed in its opposition to AT&T's forbearance petition. *See* Consolidated Communications Companies and West Telecom Services, LLC's Motion for Summary Denial of and Opposition to AT&T's Petition, WC Docket No. 16-363, at 37-43 (filed Dec. 2, 2017), *available at* https://ecfsapi.fcc.gov/file/120278453894/2016-12-02%20Consolidated%20and%20West's%20Motion%20for%20Summary%20Denial%20and%20Opposition%20to%20AT%26T's%20Forbearance%20Petition%2C%20WC%20Docket%20No%2016-363%20Final.pdf. To stop the IXCs' manipulations and abuse of their negotiating strength, the Commission should require that in the absence of a negotiated agreement with the switched access provider, an IXC "must pay" the switched access provider's previously tariffed rates for tandem switching, transport and 8YY database queries, among other things, that are expressly detariffed. *Id*. at 37-39. Moreover, to ensure that IXCs do not abuse detariffing as a means of not paying for detariffed switched access services they receive, the Commission must clarify that (a) IXCs that refuse to pay charges for switched access services provided to them are subject to violations of Sections 201 and 202 and (b) switched access service providers are not preempted from recovering such charges under alternate state-law theories, and that "formerly tariffed rates" for such services constitute a reasonable rate for recovery under state-law theories. *Id.* at 39.

[85] 47 C.F.R. § 61.26.

[86] 47 C.F.R. § 61.26(g) (providing that "[a] CLEC engaged in access stimulation…shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the price cap LEC with the lowest switched access rates in the state").

Commission's existing rules already provide AT&T with a basis to challenge those rates via a Section 208 complaint.[87]

2. Permissive tariffing remains necessary to avoid just and unreasonable discrimination.

AT&T's proposal is also inherently unjustly and unreasonably discriminatory, because it requests detariffing for intermediate carrier services but not for ILEC tandem switching and transport services. Under AT&T's proposal, any carriers that happen to provide tandem switching and transport services as intermediate carriers would be subject to mandatory detariffing; whereas ILECs providing tandem switching and transport services would *not* be subject to mandatory detariffing merely because they are not serving as intermediate carriers. AT&T offers no explanation or analysis as to why treating carriers that *are* intermediate carriers so differently from those that are *not* would be non-discriminatory. Nor does AT&T's request address the unjust and unreasonable discrimination against providers of intermediate carrier services, which do not have the scale and scope of the affiliates of AT&T and other IXCs that provide competing switched access services, that would likely result.

Similarly, permissive tariffing is necessary to ensure a level playing field between intermediate carriers and ILECs that offer tandem switching and transport services. For example, the rates of such intermediate carriers that do not serve end users are generally disadvantaged vis-à-vis their ILEC competitors when operating under rate caps, because ILECs can recover tandem switching and tandem-switched transport costs through their charges to end users while such competitive tandem providers cannot.[88] Intermediate carriers also often face high collection

[87] To our knowledge, *no IXC* has filed a formal complaint with the Commission that challenges the default tandem switching and tandem-switched transport charges that may be assessed pursuant to tariff that the Commission adopted in the *2011 USF/ICC Transformation Order*.

[88] *See 2011 USF/ICC Transformation Order*, ¶¶ 737 & 1312.

costs, because IXCs frequently (as discussed above) dispute and withhold switched access charges, forcing intermediate carriers to expend resources on dispute resolution and legal fees. Permissive tariffing is thus crucial to ensure intermediate carriers are able to operate efficiently. At the same time, alternative tandem and transport services provided by intermediate carriers and the availability of direct trunking places downward pressure on tariffed rates, ensuring that tariffed rates must be competitive with those alternatives.

3. Permissive tariffing protects consumers and is in the public interest.

Finally, permissive tariffing protects consumers and is in the public interest in a number of ways. With respect to carrier customers, permissive tariffing provides an efficient means to obtain alternative tandem switching and tandem-switched transport services from intermediate carriers when the transaction costs associated with negotiated arrangements may be too expensive. Permissive tariffing also provides rate certainty to carrier customers of different sizes, because they have access to the same default rates; whereas in a detariffed environment, that would not be the case.[89] As to end user long distance consumers, unlike detariffing ordered in the context of the *Business Data Services* proceeding where a carrier could easily disconnect business data circuits (if, for instance, an IXC fails to pay for such circuits the carrier provides to the IXC) without potentially and extensively impacting long distance voice services provisioned to end user consumers over switched access facilities, disconnection of switched access services

[89] As NTCA explained that "it remains in the public interest to permit RLECs to continue to rely on tariffs for establishing terms and conditions for interconnection arrangements, while at the same time providing these carriers with the ability to negotiate individualized agreements where individual circumstances permit and where parties have roughly equal bargaining power." NTCA Comment at 24. NTCA notes that "[f]or RLECs in particular, it is simply infeasible to negotiate individual interconnection arrangements with the numerous service providers who may individually terminate small amounts of traffic in a particular carrier's territory, but who collectively impose significant terminating traffic loads on small company networks." *Id.* NTCA therefore maintains that "[t]ariff arrangements, in contrast, provide a reasonable and efficient solution for these carriers and should be permitted to continue." *Id.*

impacts end user consumers and their ability to make long distance telephone calls. Thus, it is necessary to have permissive tariffing as a necessary backstop absent negotiated agreements to minimize disconnections that would ensue under mandatory detariffing. As the Commission explained in the *2011 USF/ICC Transformation Order* "the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended."[90] The detariffing AT&T requests would deprive consumers of these protections.

C. The Commission Should Adopt Rules to Protect Intermediate Carriers Serving Rural Areas and RLECs.

The Commission should make special considerations for certain carriers that provide tandem and transport services in rural areas. The Carrier Coalition explained that the Commission must do so because many intermediate carriers providing tandem and transport services to rural areas were formed by a consortium of RLECs, but are run independently and do not obtain any revenues from RLEC end users. To avoid undermining the investments that such providers have made in deploying innovative fiber networks in rural areas, the Commission should ensure that bill-and-keep is not imposed on such carriers by virtue of an affiliate rule where such carrier may be owned, in part, by an RLEC. Of course, eliminating the affiliate rule altogether, as discussed above and proposed by ITTA and CenturyLink, and making the end

[90] *2011 USF/ICC Transformation Order*, ¶ 734 (internal quotations omitted). While the FCC has rules to prohibit blocking, the FCC does not prohibit a carrier from disconnecting services provided to another carrier when that other carrier refuses to pay for such services. *See All American Telephone, E-Pinnacle Communications, Inc. and Chasecom v. AT&T*, Memorandum Opinion and Order, 26 FCC Rcd 723, ¶ 14 (2011) (stating that "*if a carrier has failed to pay the lawful charges* for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action in contract to compel payment, *or a termination or disconnection of service until those charges have been paid.*") (quoting *Tel-Central v. Unitel*, Memorandum Opinion and Order, 4 FCC Rcd 8338, ¶ 16 (1989)) (emphasis added).

office the universal "default network edge" is further supported for these reasons.[91]

To the extent the Commission decides to move forward in transitioning to bill-and-keep after the data gathering and analysis is undertaken (as discussed in Section II, above), the Commission should take additional measures that the Carrier Coalition proposed to ensure that RLECs are adequately able to adapt to shifting cost-recovery methods.[92] Specifically, the Commission should (1) establish an extended transition period for RLECs, (2) institute an access recovery mechanism for RLECs, and (3) allow RLECs to be eligible for other USF funding before rates are transitioned. By implementing these additional measures, the Commission will help to prevent end user rates from becoming unaffordable in rural communities that rely heavily on RLEC services. [93]

D. The Commission Should Reject AT&T's and Verizon's Proposals on the Charges Assessed for 8YY Traffic and Capping Transport Mileage.

The Commission should reject the proposals of AT&T and Verizon concerning 8YY traffic charges and transport mileage for the reasons provided below.

1. The Commission should reject AT&T's and Verizon's proposals concerning 8YY traffic.

a. AT&T's request to transition 8YY originating access services to bill-and-keep should be rejected.

Adoption of bill-and-keep for 8YY traffic "defeats the very purpose of a toll free call, which is to alleviate the calling party from paying for the call, and to shift those fees to the toll-

[91] CenturyLink Comments at 3, 5-8; ITTA Comments at 2 & 4. Verizon appears to agree that the end office should be the network edge, given it asymmetry complaint concerning "traffic terminated to a VoIP provider through its CLEC partner." See Verizon Comments at 12-13; *see also* NCTA Comments at 4-5 (complaining about the application of "affiliated" relationships).

[92] Carrier Coalition Comments at 28.

[93] *Id.*

free customer, the called party."[94] Moreover, 8YY traffic makes up a huge portion of overall originating traffic, and thus adoption of bill-and-keep for originating 8YY traffic would be extremely harmful to carriers—and especially those that rely heavily on originating access revenues.[95] This issue was recently addressed in comments filed in response to a similar proposal of the Ad Hoc Telecommunications Users Committee,[96] where commenters overwhelmingly opposed Ad Hoc's request to apply the bill-and-keep regime to originating 8YY traffic ("Ad Hoc's Request") and demonstrated that arguments in support of a flash-cut change to bill-and-keep regime for originating 8YY traffic are unavailing.[97]

The Commission should reject AT&T's similar request here[98] for four key reasons, among others. *First*, Ad Hoc's portrayal of the "historic" treatment of 8YY traffic is both

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[94] Comments of Inteliquent, Inc., WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 2 (filed July 31, 2017) ("Inteliquent Comments").

[95] Comments of Consolidated Communications Companies, Peerless Network, Inc. and West Telecom Services LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 9 (filed July 31, 2017) ("8YY Carrier Coalition July 31, 2017 Comments"), *available at* https://ecfsapi.fcc.gov/file/107310972719931/2017-07-31%20Comments%20of%20Consolidated%2C%20Peerless%2C%20and%20West%20in%20Opposition%20to%20Ad%20Hoc's%20Request.pdf. at 9 (stating that a flash-cut to bill-and-keep for originating 8YY traffic would result in a 44% decrease of originating switched access revenues for Consolidated Communications).

[96] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92, Public Notice, DA 17-631 (rel. Jun. 29, 2017).

[97] Reply Comments of Consolidated Communications Companies, Peerless Network, Inc. and West Telecom Services LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, (filed Aug. 15, 2017) ("8YY Carrier Coalition Aug. 15, 2017 Reply Comments"), *available at* https://ecfsapi.fcc.gov/file/10815038377009/2017-08-15%20Reply%20Comments%20of%20Consolidated%2C%20Peerless%2C%20and%20West.pdf; *see also* 8YY Carrier Coalition July 31, 2017 Comments at 6-7. The 8YY Carrier Coalition's Aug. 15, 2017 Reply Comments and July 31, 2017 Comments are not fully repeated here and hereby incorporated by reference.

[98] AT&T Comments at 27-28.

incorrect and misleading.[99] The rates for terminating end office switching, tandem-switched transport and tandem switching *have never applied to the originating end of 8YY traffic*.[100] *Second*, adoption of Ad Hoc's Request would trigger an abrupt, hugely disruptive, and inappropriate regime change for 8YY traffic, especially where terminating rates have already been or soon will be transitioned to bill-and-keep.[101] ***Third,*** Ad Hoc's Request would perversely defeat the expectations of both carriers and customers with respect to 8YY service.[102] *Fourth,* there is currently insufficient evidence to support a wholesale, industry-wide overhaul of charges for originating 8YY traffic.[103]

As explained in reply comments filed in response to Ad Hoc's Request, the arguments of the few commenters supporting the proposed detariffing are unavailing, because they fail to describe or quantify any supposed benefit of a flash-cut regime change that that would somehow outweigh its harmful consequences.[104] Rather, they largely portray regime change as a potential way to address alleged access stimulation schemes.[105] Yet their allegations concern the actions of a *few carriers*, and thus – even if true – do not provide a valid basis for *industry-wide*, flash-cut regime change. Such issues can instead be addressed by the Commission's existing access stimulation rules and complaint procedures.[106] If the Commission, however, were to adopt any regime change, it should do so by way of a holistic approach with balanced rule transitions,

[99] 8YY Carrier Coalition Aug. 15, 2017 Reply Comments at 2 & 3-5.

[100] *Id.* at 2 & 3-5.

[101] *Id.* at 2 & 5-7.

[102] *Id.* at 2 & 7-9.

[103] 8YY Carrier Coalition Aug. 15, 2017 Reply Comments at 2 & 9-10.

[104] *Id.* at 2 & 10-14.

[105] *Id.* at 2 & 11.

[106] *Id.* at 2-3 & 11.

including a multi-year phase-in and revenue recovery mechanisms, along with coordinated industry and consumer re-education efforts to explain that 8YY services are no longer free to the caller.[107]

b. Verizon's request to eliminate tandem switching and transport charges on 8YY aggregated traffic or set such charges at a low uniform national rate should be rejected, as the Commission already has pricing protections in place.

For the above reasons, Verizon's request that the Commission adopt a rule to immediately eliminate a subset of 8YY charges—tandem switching and transport charges on aggregated 8YY calls—should also be rejected.[108] Under the regime Verizon proposes, the carrier serving the end users would be charged for the 8YY services (rather the customer of the 8YY services), such that the originating carrier would be forced to assess its end users for the costs that the originating carrier incurred in handling an 8YY call, which as noted above defeats the very purpose of a "toll free" call.

The Commission should also reject Verizon's request that the Commission cap tandem switching and transport charges on aggregated 8YY calls at a low uniform national rate.[109] Verizon's request is based on a misinterpretation of the existing CLEC benchmark rule, which requires CLECs to benchmark their rates to "the incumbent local exchange carrier . . . that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[110]

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[107] *Id.* at 3 & 12.

[108] Verizon Comments at 10-11; *see also* Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and CC Docket No. 01-92 (filed Nov. 6, 2017) ("Verizon's Nov. 6, 2017 Letter").

[109] Verizon Comments at 10-11.

[110] 47 C.F.R. § 61.26(a)(2), (b)(1).

While Verizon maintains that the CLEC benchmark rule requires CLECs providing 8YY traffic aggregation "to benchmark to the rates of the incumbent LEC where the call originated, not to the incumbent LEC where the CLEC hands off the call to the IXC,"[111] the Commission previously disagreed with this interpretation and was upheld by the D.C. Circuit.[112] In particular, the D.C. Circuit denied the argument that, under the CLEC benchmark rule, "the competing ILEC is…the ILEC serving the 8YY caller, meaning that the competing ILEC will differ based on the location of the caller."[113] Instead, the D.C. Circuit upheld the Commission's decision that, when determining the competing ILEC for 8YY aggregated traffic, "[w]e are concerned not with which ILEC would have carried the traffic from the originating caller but rather with which ILEC would have carried the traffic from [the end office switch] to [the IXC] had [the tandem provider] not inserted itself into the traffic path."[114]

Verizon's concerns with access stimulation schemes with "some carriers" are already addressed by the Commission's access stimulation rules.[115] For example, those rules provide that, when a CLEC is engaged in access stimulation – as defined in the Commission's rules – the carrier "must reduce its interstate switched access tariffed rates to the rates of the price cap LEC in the state with the lowest rates[.]"[116] Thus, to the extent certain carriers are engaged in access stimulation of aggregated 8YY traffic, the Commission's rules already provide a basis to

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[111] Verizon Comments at 11.

[112] *AT&T Servs., Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd 2586, ¶¶ 25-26 (2015), *aff'd in relevant part, remanded in part on other grounds, Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004-05 (D.C. Cir. 2016).

[113] *Id.* at 1005.

[114] *Id.*

[115] *See, e.g.*, 47 C.F.R. §§ 61.3(bbb), 61.26(g), 61.39(g), & 69.3(e)(12).

[116] *2011 USF/ICC Transformation Order*, ¶ 657; 47 C.F.R. § 61.26(g).

challenge and remedy such conduct. Verizon fails to explain why the Commission's existing rules are insufficient to address the alleged conduct.[117]

Moreover, even if additional measures were necessary to address access stimulation or other arbitrage schemes, there exist a number of available vehicles to do so short of industry-wide, flash-cut regime change that Verizon proposes. For example, Verizon could seek to direct connect to the location where the aggregated 8YY traffic enters the PSTN[118] or file informal and formal complaints pursuant to Section 208 of the Act against individual carriers for violation of the Commission's access stimulation rules or the Communications Act in general.[119] Such complaint proceedings allow the Commission to examine the conduct of the few carriers engaged in the alleged access stimulation schemes without impacting those that are not.[120]

c. AT&T's request that the Commission forbear from its rules permitting LECs to tariff and assess per query database dip charges for 8YY traffic should be rejected.

AT&T requests that the Commission forbear from its rules that permit LECs to tariff and assess per query database dip charges for 8YY traffic.[121] As parties have emphasized in response

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[117] *See, e.g.*, Verizon Comments at 10-11; Verizon's Nov. 6, 2017 Letter at 1-3.

[118] Relatedly, ITTA requests that Commission establish a "rule that any originator of 8YY traffic must also provide a direct interconnection point, so that the IXC or other carrier transporting the traffic has a right to direct end office termination without having to pick up that traffic from an aggregator" and that the "8YY traffic originator should still be compensated by the IXC for its originating traffic." ITTA Comments at 10-12.

[119] 47 U.S.C. § 208.

[120] Moreover, Verizon utterly ignores the fact when it has disputed certain charges, it has engaged in self-help by not paying for the access services it receives on the theory that such self-help does not violate the Act. *See, e.g.*, Verizon Response to Peerless's Motion to File Supplemental Authority, Case No. 14-cv-7417, Docket No. 225 (N.D. Ill., filed July 27, 2017) (arguing that an IXC customer "purchasing tariffed services *cannot* violate § 201 by refusing to pay for those services, whatever the customer's reason for nonpayment and citing *All American Tel. Co. v. AT&T Corp.*, 26 FCC Rcd 723, ¶ 10 (2011) (emphasis in original)).

[121] AT&T Comments at 28 (citing Petition of AT&T Services, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain Rules For Switched Access Services And Toll

to AT&T's pending forbearance petition,[122] WC Docket No. 16-363, the Commission should reject this request for the same reasons that AT&T's Forbearance Petition should be denied. AT&T's forbearance request should be denied on threshold reasons because, among other things, AT&T lacks standing to seek the forbearance sought,[123] and the request is otherwise ill-supported and insufficient.[124] AT&T's forbearance request should be denied on the merits because AT&T failed to prove the three statutory criteria set forth in Section 10(a)(1) through (3) of the Communications Act are satisfied. In particular, AT&T fails to show that (1) the tariffing

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Free Database Dip Charges, WC Docket No. 16-363 (filed Sep. 29, 2016) ("Forbearance Petition")). While AT&T just recently filed a motion seeking leave to withdraw its Forbearance Petition and requests that the Commission dismiss the Petition without prejudice, the Commission has not ruled on this Motion. *See* AT&T's Motion to Withdraw Petition for Forbearance, WC Docket No. 16-363 (filed Nov. 16, 2017).

[122] *See, e.g.,* Consolidated Communications Companies and West Telecom Services, LLC's Motion of Summary Denial of and Opposition to AT&T's Petition, WC Docket No. 16-363 (filed Dec. 2, 2016) ("Consolidated and West Motion"); Motion for Summary Denial and Opposition to AT&T's Petition of Birch Communications, Inc.; BTC, Inc.; Cbeyond Communications, LLC; Goldfield Access Network, LC; Kansas Fiber Network, LLC; Louisa Communications; Nex-Tech, Inc.; and Peninsula Fiber Network, LLC, WC Docket No. 16-363 (filed Dec. 2, 2016) ("Birch *et al.* Motion"); Comments of NTCA—The Rural Broadband Association, WC Docket No. 16-363 (filed Dec. 2, 2016) ("NTCA Comments"); Reply Comments of Consolidated Communications Companies and West Telecom Services, LLC, WC Docket No. 16-363 (filed Dec. 19. 2016) ("Consolidated and West Reply Comments"); Reply Comments of Birch Communications, Inc.; Cbeyond Communications, LLC; Goldfield Access Network, LC; Kansas Fiber Network, LLC; Louisa Communications; Nex-Tech, Inc.; and Peninsula Fiber Network, LLC, WC Docket No. 16-363 (filed Dec. 19, 2016) ("Birch *et al.* Reply Comments"); Reply Comments of INCOMPAS, WC Docket No. 16-363 (filed Dec. 19, 2016) ("INCOMPAS Reply Comments"). *See* also Letter from Philip Macres, counsel for Consolidated and West, to Marlene H. Dortch, Secretary, WC Docket No. 16-363 (filed June 22, 2017) ("Consolidated and West July 22, 2017 Letter"); Letter from Pamela Hollick, President, Midwest Association of Competitive Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-363 (filed July 31, 2017) ("MACC July 31, 2017 Letter").

[123] *See, e.g.,* Consolidated and West Reply Comments at 5-6; Birch *et al.* Reply Comments at 5-6; Consolidated and West July 22, 2017 Letter at Attachment p. 1; MACC July 31, 2017 Letter at 2-3.

[124] *See, e.g.,* Consolidated and West Motion at 15-19; Birch *et al.* Motion at 14-19; INCOMPAS Reply Comments at 3; NTCA Comments at 11-14; Consolidated and West July 22, 2017 Letter at Attachment p. 2; MACC July 31, 2017 Letter at 3.

rules at issue are not necessary to ensure charges and practices remain just and reasonable and not unjustly and unreasonably discriminatory on a nationwide basis; (2) the tariffing rules at issue are not necessary for the protection of consumers; and (3) forbearance from applying the tariffing rules is consistent with the public interest.[125]

2. The Commission should reject Verizon's proposed interim rule that would cap billed tandem-switched transport mileage.

The Commission should reject Verizon's request that the Commission, in reforming transport rates, adopt an interim rule that caps billed tandem-switched transport mileage.[126]

While carriers are free to adopt transport caps on transport mileage, the Commission need not prescribe a rule that requires the limitation of mileage, as doing so creates a tremendous disincentive for Verizon to obtain direct connects when it has sufficient traffic over a particular route. By and large, the mileage pumping schemes that Verizon references are associated with Centralized Equal Access ("CEA") providers that have been known for prohibiting IXCs from direct connecting with their subtending RLECs.[127] The Commission requires CLECs to "permit an IXC to install direct trunking from the IXC's point of presence to the competitive LEC's end

[125] *See, e.g.,* Consolidated and West Motion at 34-37; Birch *et al.* Motion at 31-33; Consolidated and West July 22, 2017 Letter at Attachment p. 2-3; MACC July 31, 2017 Letter at 3-6.

[126] Verizon Comments at 9-10.

[127] *See, e.g.,* Verizon Comments at 7-9; T-Mobile Comments at 4; AT&T Comments at 14; *see also* Letter from David Carter, counsel for James Valley Cooperative Telephone Company and Northern Valley Communications, L.L.C., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-363 (filed Aug. 4, 2017) (explaining that SDN, which is a CEA provider, "has repeatedly made clear that CLECs, like Northern Valley, that are affiliates of SDN's members must deny an IXC's request to exchange TDM traffic through a direct connect. Indeed, just a few years ago, SDN amended its Operating Agreement in an effort to contractually bind Northern Valley to adhere to SDN's policy that prevents connected carriers from providing TDM direct connects.").

office, thereby bypassing any tandem function."[128] The Commission explained that "[s]o long as an IXC may elect to direct trunk to the competitive LEC end offices, and thereby avoid the tandem switching function and associated charges, there should be limited incentive for competitive LECs to route calls unnecessarily through multiple switches, as suggested by AT&T."[129]

Accordingly, if Verizon does have an issue with a particular LEC's transport mileage, it can obtain direct connects and provision transport in a more efficient manner. Otherwise, Verizon can file a Section 208 complaint against a carrier if it believes the carrier is engaging in mileage pumping or is engaging in an unreasonable practice under Section 201(b) of the Act that may involve having to route traffic over inefficient and unnecessarily long transport routes, [130] as AT&T has done.[131]

V. TRANSIT: The Commission Should Not Apply Bill-and-Keep or Otherwise Mandate Rate Reductions for the Highly Competitive Transit Services and Tariffing Services Should Remain Permissible

A. The Commission Should Not Impose Bill-and-Keep or Any Other Price Regulations on Transit Services, as the Marketplace for Transit Services is Competitive

As Carrier Coalition explained, the Commission should not impose bill-and-keep

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[128] *Access Charge Reform, PrairieWave Telecommunications, Inc. Petition for Waiver of Sections 61.26(b) and (c) or in the Alternative, Section 61.26(a)(6) of the Commission's Rules*, CC Docket No. 96-262, Order, 23 FCC Rcd 2556, ¶ 27 (2008).

[129] *Id.*

[130] As Verizon recognizes (Verizon Comments at 9), the Commission has addressed complaints associated with mileage pumping in the context of a Section 208 complaint. Verizon Comments at 9 and n.29 (citing *AT&T Corp.* v. *Alpine Communications LLC*, Memorandum Opinion and Order, 27 FCC Rcd 11511 (2012)).

[131] *See* AT&T Corp. v. Iowa Network Services d/b/a Aureon Network Services, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001 (filed June 8, 2017); AT&T Corp. v. Great Lakes Communication Corp, Proceeding No. 16-170, Bureau ID No. EB-16-MD-001 (filed Aug. 16, 2016).

arrangements on transit service provided by intermediate carriers since, by definition, such carriers have no end user customers they can bill for transit services.[132] Nor should the Commission impose any non-bill-and-keep price regulations on transit services, as such regulations are not only unwarranted due the significant competition among transit providers but could actually harm competition.[133]

Commenters overwhelmingly agree that the Commission should not regulate transit rates. AT&T states that "the Commission has no legal authority to regulate the *rates* for any of these intermediate services under the Section 251(b)(5) bill-and-keep framework."[134] CenturyLink states that transit services should not be regulated and "not otherwise be the subject of further ICC reform at this time."[135] ITTA states that the Commission "should decline to regulate" transit services.[136] SDN emphasizes that "transit service should remain unregulated."[137]

Like the Carrier Coalition, these Commenters further agree that the transit market is competitive. AT&T emphasizes that transit services are "highly competitive in most areas of the country"[138] and discusses the various competitive transit providers such as Inteliquent, Level 3, Peerless, West, and Tandem Transit.[139] ITTA states that "ITTA members frequently compete with numerous alternative providers to supply transit services" and the "transit market is

[132] Carrier Coalition Comments at 29-30.

[133] *Id.* at 30-31.

[134] AT&T Comments at 16.

[135] CenturyLink Comments at 11.

[136] ITTA Comments at 2.

[137] Comments of South Dakota Network, LLC, WC Docket No. 10-90, CC Docket No. 01-92, at 9 (filed Oct. 26, 2017) ("SDN Comments").

[138] AT&T Comments at 17.

[139] *Id.* at 17-19.

competitive."[140] SDN states the "transit market is a competitive market and transit services are offered competitively."[141]

The Commission should reject the claims of the carriers that assert otherwise. For instance, NCTA's claim that the largest ILECs retain a "monopoly position" in the transit marketplace[142] and Sprint's claims concerning transit rate trends are incorrect,[143] as rates in the transit market have in fact declined by up to 90% over the past 10 years,[144] evidencing strong competition in the transit market.

In fact, as the Carrier Coalition previously noted, there "are four or more transit providers in nearly every major market, and additional competitive options are available through IP interconnection arrangements."[145] Furthermore, while the transit market is already competitive, competition would be further promoted if the Commission adopts policies that encourage direct connections as an alternative to transit services.[146]

B. Intermediate Carriers Should Be Allowed to Tariff Transit Rates

As the Carrier Coalition explained, transit services and rates are effectively part of many carriers' tariffs that should remain in effect and not otherwise be subjected to mandatory detariffing.[147] While certain carriers advocate that transit services be detariffed along with their

[140] ITTA Comments at 16-17.

[141] SDN Comments at 9.

[142] NCTA Comments at 3-4.

[143] Sprint Comments at 7.

[144] Carrier Coalition Comments at 33.

[145] *Id.* at 32.

[146] *Id.* at 33.

[147] *Id.* at 34-35.

companion tandem switching and transport services,[148] such arguments should be rejected for the reasons discussed above in Section IV.B. Moreover, as the Carrier Coalition, explained, permissive tariffing promotes competition in the transit market and thus should be kept in place.[149]

VI. CONCLUSION

For the foregoing reasons, the Commission should establish rules on the network edge, tandem switching and transport, and transit that are consistent with the above reply comments and Carrier Coalition's initial comments in this proceeding.

Respectfully submitted,

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[148] *See, e.g.,* AT&T Comments at 15-19.

[149] Carrier Coalition at 34-35.